RCRA Metrics Plain Language Guide
State Review Framework Round 3

This Plain Language Guide (PLG) describes the elements and metrics EPA uses during a State Review Framework (SRF) review, and provides instructions on how to use the metrics to make appropriate findings.

SRF reviewers should also use the RCRA file review checklist and spreadsheet when conducting file reviews.

Data used in SRF reviews fall into three primary categories — data verification counts, data metrics, and file review metrics. These metrics provide an initial overview of agency performance.

1. Data verification counts are to assure the completeness and accuracy of universes and activities essential to establishing values for other data metrics. The annual data verification process requires states and EPA regions to review facility and activity counts in order to create accurate and complete frozen data. EPA expects agencies to correct any inaccuracies in RCRAInfo during the data verification process. Data counts, once verified, are frozen and utilized for public access purposes as well as for the SRF.

2. Data metrics are metrics where counts are combined or compared in some way that is informative. EPA derives data metrics from frozen, verified data in RCRAInfo. Reviewers download data metrics from the Online Tracking Information System (OTIS) to get an initial overview of a state or local agency's performance. All data metrics fall into one of the following subcategories:

- **Goal metrics** provide a goal and a national average, both of which are expressed as percentages. **EPA evaluates agencies against goals not averages.** These metrics include averages only to provide a sense of where an agency falls relative to others.

- **Review Indicator metrics** use national goals and/or averages to indicate when agencies diverge from national norms. When deviation from a national goal or average is significant, this does not always mean that a performance issue exists, just that the issue should be explored further. EPA should ensure that it pulls a sufficient sample of files to evaluate the issue during the file review (see the *File Selection Protocol* for additional guidance). EPA and the state or local agency should discuss the issue to determine if a problem exists.

- **Alternative CMS metrics** are only required to be included in the review when an agency has a compliance monitoring strategy (CMS) that includes one or more alternative inspection commitments. Typically, under an alternative CMS an agency will substitute a certain number of inspections at larger facilities for some at smaller facilities. When the agency does not have an alternative CMS, EPA will evaluate the state against the national inspection coverage goals via metrics 5a, 5b, and 5c.

3. File review metrics are compiled during EPA's review of facility files (including information such as inspection reports, evaluations, enforcement responses and actions, and penalty documentation). File reviews provide a greater understanding of an agency's performance than data metrics alone. All file review metrics have national goals. However, unlike data metrics with goals, file metrics will not have national averages.

Guidance References and Acronyms

The SRF Documentation Page on OTIS provides a full list of links to SRF guidance and policies.

Year reviewed refers to the federal fiscal year being reviewed, not the year in which the review is conducted. Ideally, the year reviewed is the year preceding the year in which the SRF review is conducted. **Agency** refers to the state, local, or federal agency that has the lead for compliance monitoring and enforcement within the state or other jurisdiction undergoing the SRF review.

A list of acronyms is provided as an attachment to this Plain Language Guide.

Using Metrics to Determine Findings

Goal metrics always have numeric goals and stand alone as sufficient basis for a finding. For example, the goal for RCRA metric 2b is for agencies to accurately enter 100 percent of minimum data requirements (MDRs) into RCRAInfo. To analyze performance under this metric, compare the percentage of MDR actions accurately entered to the goal of 100 percent.

Based on this analysis, the reviewer would make a finding. All findings will fall under one of these categories:

Meets or Exceeds Expectations: The SRF was established to define a base level or floor for enforcement program performance. This rating describes a situation where the base level is met and no performance deficiency is identified, or a state performs above national program expectations.

Area for State Attention: An activity, process, or policy that one or more SRF metrics show as a minor problem. Where appropriate, the state should correct the issue without additional EPA oversight. EPA may make recommendations to improve performance, but it will not monitor these recommendations for completion between SRF reviews. These areas are not highlighted as significant in an executive summary.

Area for State Improvement: An activity, process, or policy that one or more SRF metrics show as a significant problem that the agency is required to address. Recommendations should address root causes. These recommendations must have well-defined timelines and milestones for completion, and EPA will monitor them for completion between SRF reviews in the SRF Tracker.

Whenever a metric indicates a major performance issue, EPA will write a finding of Area for State Improvement, regardless of other metric values pertaining to a particular element. See the Round 3 Report Template for complete guidance on writing findings.

Using Other Metrics

When metrics other than Goal metrics indicate problems, EPA should conduct the additional research necessary to determine the nature of the issue. These metrics provide additional information that is useful during file selection, and for gauging program health when compared to other metrics.

For example, RCRA metric 7b is a Review Indicator for violations found during inspections, and State X's rate is 15 percent (the national average is 36 percent in this particular year). EPA can only determine whether this low rate represents a performance issue through a file review of inspection reports and violation determinations.

Element and Metric Definitions

Element 1 — Data

EPA uses Element 1 to evaluate data accuracy and completeness. This review is conducted in the following two ways:

- **File review:** EPA evaluates data accuracy and completeness under metric 2b, which is a file review metric that compares data in the OTIS Detailed Facility Report or RCRAInfo to information in facility files.

- **Evaluating data metrics:** In addition, as the reviewer has discussions with the state and conducts the data metric analysis and file review, he or she may find an SRF data metric to be inaccurate to a significant degree.

  To provide an example, data metric 5a shows that State X inspected 5 of its 20 TSDFs. However, the state provides its own data showing that it inspected all 20 TSDFs, but failed to enter inspections for 15 of them into RCRAInfo.

  This failure to enter inspections into RCRAInfo would be an Area for State Improvement under Element 1. Conversely, if the value for metric 5a were accurate and the state had only inspected 5 of 20 TSDFs, this would be an Area for State Improvement under Element 2 (Inspections) for failure to inspect the required number of TSDFs.

  EPA may also note under Element 1 any significant discrepancy in universe data available on the RCRA data dashboard.

When there are significant data inaccuracies, the reviewer would include a finding of Area for State Attention or Area for State Improvement, depending on the magnitude of the inaccuracy. In

the case of a data metric being inaccurate, the finding should cite both the reported and, when possible, the actual values.

Refer to ECHO Data Entry Requirements for minimum data requirements.

Key metrics: 2a, 2b, 5a, 5b, 5c, 7b, 8a, and 10a. Also consider 5d and 5e when including them in the review.

Metric 2b — Accurate entry of mandatory data

Metric type: File Review, Goal

Goal: 100% of data are complete and accurate

What it measures: Percentage of files reviewed where mandatory data are accurately reflected in the national data system. The numerator = number of files reviewed that accurately reflect mandatory data, denominator = number of files reviewed.

Guidance: Reviewers should compare data in the OTIS Detailed Facility Report (DFR) or RCRAInfo with information in the facility files to check that the DFR accurately reflects activities such as inspection dates, inspection types, significant noncompliance (SNC) status, and enforcement responses. See the File Review Checklist for complete instructions.

Also, check to see if there is file information that is missing in the DFR. If information in the files is missing from or inaccurately entered into the national database, the data for that file is not complete or accurate. This should be noted under Element 1.

Reviewers should also consider their knowledge of the agency's program when conducting this analysis. For example, if the reviewer notices multiple compliance evaluation inspections identified in the DFR for a facility within one week's time, it is highly unlikely that the agency has actually conducted multiple CEIs in this timeframe. It is more likely that the later ones, if they are separate actions at all, are follow-up inspections.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003), current *OECA National Program Manager Guidance*

Element 2 — Inspections

Element 2 evaluates:

1. Inspection coverage compared to CMS commitments
2. Inspection report completeness and sufficiency to determine compliance
3. Inspection report timeliness

EPA is only required to evaluate metrics 5d and 5e when the agency has exercised flexibility under an alternative CMS commitment for its inspection frequencies. When the agency does not exercise this flexibility, EPA can choose whether to include these metrics.

Key metrics: 5a, 5b, 5c, 6a, and 6b. Also include metrics 5d and 5e when the state has an alternative CMS for inspection coverage commitments.

Metric 5a — Two-year inspection coverage of operating TSDFs

Metric type: Data, Goal

Goal: 100%

What it measures: Of those operating at the time of the data freeze, the percentage of the treatment, storage, and disposal facility (TSDF) universe that had a CEI, GME, or OAM inspection during the two-year period of review. The numerator = number of TSDFs operating at the time of the data freeze that had a CEI, GME, or OAM inspection during the two-year period of review; denominator = number of operating TSDFs at the time of the data freeze.

Guidance: According to the RCRA statute, all TSDFs should be inspected every two years. EPA should conduct a further review when lead agencies do not meet this goal. Per page 26 of the *RCRA Compliance Monitoring Strategy*, states that are lead agencies are to cover at least 50 percent of non-government TSDFs every year. While EPA can credit a couple of its own inspections toward the 100 percent goal under this metric, it generally expects the state to provide coverage.

Applicable EPA policy/guidance: Current *OECA National Program Manager Guidance*, *Compliance Monitoring Strategy for the Resource Conservation and Recovery Act (RCRA) Subtitle C Program*

Metric 5b — Annual inspection coverage of LQGs

Metric type: Data, Goal

Goal: 20%, or 100% of alternative commitment

What it measures: The percentage of the Biennial Report (BR) large quantity generator (LQG) universe that had a compliance evaluation inspection (CEI) during the year reviewed. The numerator = number of LQGs in the BR universe that had a CEI during the year reviewed; denominator = number of LQGs in the BR universe.

Guidance: Based on the RCRA *Compliance Monitoring Strategy* (CMS), EPA only counts CEIs under this metric. The National Program Manager Guidance (NPM Guidance) states that 20 percent of LQGs should have a CEI each year.

This metric uses the LQG universe from the most recent BR published before the review year.

The BR universe, while not perfect, in many cases offers the most accurate LQG count. However, because this is a difficult universe to gauge, EPA and the agency may agree upon an alternative count. If EPA and the agency decide to use an alternative count, EPA should explain in the report how the count was determined.

Per the CMS, states that are lead agencies are to inspect at least 20 percent of the BR LQG universe annually. However, a few EPA inspections can contribute toward meeting these goals:

> The state is to: [i]nspect at least 20 percent (20%) of its LQG universe each year. An appropriate portion of the Region's six (6) required LQG inspections (RCRA02), may be counted toward the state's 20 percent coverage obligation (RCRA02.s). . . the Region's contribution should constitute only a small portion of the state's 20 percent obligation (e.g., less than ten percent). (15-16)

The CMS then includes the following footnote:

> For example, given a universe of 100 LQGs, the state annually must conduct 20 LQG inspections (usually CEIs). EPA's contribution to the state's coverage requirement should not exceed two (2) inspections (i.e., 10 percent of the required 20 inspections). EPA, however, can do more inspections, but such additional inspections will not count toward the state's coverage requirement (16).

Lead agencies with approved alternative CMS plans may substitute other facility inspections for LQGs per the *Guidance for RCRA Core LQG Pilot Projects*. Whether or not the agency has an alternative plan, when lead agencies do not meet this metric's goal, EPA should conduct a further review:

- Look at five-year inspection coverage (metric 5c)
- Talk to the state during the file review about why the goal or commitment was not met
- Make sure that enough LQGs with inspections are selected for the file review
- Confirm that the alternative agreement was met

EPA should have reported the universe number it will use (if different from Biennial Reporting) in the comment field in the Budget Automation System during the Annual Commitment System process as directed by the *RCRA Compliance Monitoring Strategy*.

Applicable EPA policy/guidance: Current *OECA National Program Manager Guidance*, *Guidance for RCRA Core LQG Pilot Projects* (2007), *Compliance Monitoring Strategy for the Resource Conservation and Recovery Act (RCRA) Subtitle C Program*

Metric 5c — Five-year inspection coverage of LQGs

Metric type: Data, Goal

Goal: 100% of LQGs, or 100% of alternative commitment

What it measures: The percentage of the Biennial Report (BR) large quantity generator (LQG) universe that had a compliance evaluation inspection (CEI) during the five-year period of review. The numerator = number of LQGs in the BR universe that had a CEI during the five-year review period; denominator = number of LQGs in the BR universe.

Guidance: Based on OECA's annual *National Program Manager Guidance*, this metric only counts CEIs. NPM guidance states that 100 percent of LQGs have CEIs every five years.

Please see the guidance provided under metric 5b for how many EPA inspections can be counted toward the state goal of 100 percent.

This metric uses the LQG universe from the most recent BR published before the review year.

The BR universe, while not perfect, in many cases offers the most accurate LQG count. Due to the challenges of maintaining a dynamic RCRA universe, an overview of a five-year period will not be completely accurate.

Because this is a difficult universe to gauge, EPA and the agency may agree upon and substitute an alternative universe count. EPA should have reported the universe number it plans to use (if different from Biennial Reporting) in the comment field in the Budget Automation System during the Annual Commitment System process as directed by the *RCRA Compliance Monitoring Strategy*.

In addition, lead agencies with approved alternative Compliance Monitoring Strategy plans may substitute other facility inspections for LQGs per the *Guidance for RCRA Core LQG Pilot Projects*.

EPA should conduct a further review when the agency does not meet the goal to determine if this was due to universe changes or to not inspecting the full universe.

Applicable EPA policy/guidance: Current *OECA National Program Manager Guidance*, *Guidance for RCRA Core LQG Pilot Projects* (2007), *Compliance Monitoring Strategy for the Resource Conservation and Recovery Act (RCRA) Subtitle C Program*

Metric 5d — Five-year inspection coverage of active SQGs

Metric type: Alternative CMS

What it measures: The percentage of active small quantity generators (SQGs) that had an inspection during the five-year review period. The numerator = number of active SQGs that had an on-site inspection during the five-year review period; denominator = number of active SQGs.

Guidance: This metric is only required when evaluating agencies with alternative CMS plans for inspection coverage, and optional otherwise.

EPA considers RCRA evaluation types CAC, CDI, CEI, CSE, FCI, GME, and OAM as on-site inspections under this metric. Due to the challenges of maintaining a dynamic RCRA universe, an overview of a five-year period will not be completely accurate.

However, this metric may provide important information for the review, particularly in cases where SQG inspections are being substituted for large quantity generator (LQG) inspections per the *Guidance for RCRA Core LQG Pilot Projects*. In alternative inspection plans, lead agencies may trade off LQG inspections for increased inspection coverage of SQGs. In these cases, EPA will hold the agency accountable under SRF for meeting its SQG inspection target.

Applicable EPA policy/guidance: *RCRA Compliance Monitoring Strategy* (2010)

Metric 5e — Five-year inspection coverage of other sites

Metric type: Alternative CMS

What it measures: Number of inspections in the last five years for the following universes:

- **5e1:** Active conditionally exempt small quantity generators (CESQGs)
- **5e2:** Active transporters
- **5e3:** Active non-notifiers
- **5e4:** Active sites not covered by metrics 5a through 5e3

Guidance: This metric is only required when evaluating agencies with alternative CMS plans for inspection coverage, and optional otherwise.

EPA counts RCRA evaluation types CAC, CDI, CEI, CSE, FCI, GME, and OAM as inspections under this metric. Due to the challenges of maintaining an active RCRA universe, an overview of a five-year period will not be completely accurate.

However, this metric may provide important information for the review, particularly in cases where agencies are substituting inspections at other sites for LQG inspections. In alternative CMS plans, lead agencies may trade off LQG inspections for increased inspection coverage of other facility types. In these cases, EPA will hold the agency accountable under SRF for meeting its CESQG and transporter inspection targets.

Metric 6a — Inspection reports complete and sufficient to determine compliance

Metric type: File Review, Goal

Goal: 100%

What it measures: The percentage of on-site inspection reports reviewed that are complete and provide sufficient documentation to determine compliance. The numerator = number of inspection reports reviewed with complete and sufficient documentation; denominator = number of inspection reports reviewed.

Guidance: The focus should be primarily on compliance evaluation inspections (CEIs) since they are required for treatment, storage, and disposal facilities (TSDFs) and large quantity generators (LQGs). At its discretion, EPA may review a limited number of other types of on-site inspections, such as FCIs or OAMs.

EPA should use the inspection report completeness assessment at the end of the RCRA File Review Checklist to assess and summarize each inspection. The checklist describes what needs to be included in a complete inspection report. In general, this includes:

- A narrative describing the facility, its RCRA-regulated activities, potential violations observed, etc.
- A checklist
- Any documentary support, such as photographs, maps, sampling results, etc.

If certain components listed in the checklist are routinely missing, EPA should mention these in the SRF report.

Agencies will likely have their own methods for completing inspection reports. EPA should discuss this with the agency at the beginning of the review to determine if the agency's inspection report documentation (particularly for CEI inspections) is consistent with EPA requirements for a complete report.

EPA should also review inspection reports for sufficient documentation to determine compliance at the facility. When an inspection report is complete as determined by the completeness assessment in the checklist, it provides sufficient information to document compliance at the facility. If a report is not complete, it may nonetheless contain sufficient documentation to determine compliance.

Applicable EPA policy/guidance: *RCRA Inspection Manual* (1998), *Review of RCRA Inspection Report Practices*

Metric 6b — Timeliness of inspection report completion

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of inspection reports reviewed that are completed in a timely manner per the standards described below (numerator = number of inspection reports reviewed that were completed in a timely manner; denominator = number of inspection reports reviewed).

Guidance: The agency should have its own timeliness guidelines stated in policy. If not, it should be included in a grant work plan (PPA or PPG) or Memorandum of Agreement (MOA). EPA should use this standard to determine whether the agency is completing reports in a timely manner.

In lieu of such a standard, the *Hazardous Waste Civil Enforcement Response Policy* (2003) states that agencies should make a violation determination within 150 days of Day Zero. EPA should use this 150-day standard for inspection report timeliness when the state does not have its own standard for completing inspection reports in a timely manner.

Reviewers should also record the length of time that it took to complete each report in the File Review Checklist to compute average timeframes. This average can also be factored in when determining the finding.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003), current *OECA National Program Managers' Guidance*

Element 3 — Violations

Under this element, EPA evaluates the accuracy of the agency's violation and compliance determinations, and the accuracy and timeliness of its significant non-compliance determinations.

Reviewers will evaluate metrics 2a, 7b, 8a, and 8b during the data metric analysis. If the reviewer finds that violation or SNC rates are lower than the national average, he or she may want to include additional inspections or violations in the file review to determine whether violations and SNCs are being determined accurately.

Metric 7a covers the accuracy of compliance determinations made from inspections, and metric 8c covers the appropriateness of SNC determinations. These metrics along with metric 8b (timeliness of SNC determinations) will generally form the basis for findings under this element.

Key metrics: 2a, 7a, 7b, 8a, 8b, and 8c

Metric 2a — Long-standing secondary violators

Metric type: Review Indicator

What it measures: The number of sites with secondary violations (SVs) open for more than 240 days that have not returned to compliance or have not been designated as being in significant noncompliance (SNC).

Guidance: If there is a high number of SVs relative to the total universe of facilities in the state, select additional files with SVs for the file review to determine the nature of the problem. The file review, conversations with agency personnel, and other research can help you gauge:

- **Whether the agency is designating long-standing SVs as SNCs.** The 2003 *Hazardous Waste Civil Enforcement Response Policy* states that agencies should re-designate SVs as SNC if the violator does not return to compliance in 240 days. EPA should review the list of violators that do not return to compliance in 240 days to determine whether data entry

problems, SNC designation issues, or SVs unaddressed by enforcement exist. EPA should address data entry problems under Element 1, SNC designation issues under Element 3, and unaddressed SVs under Element 4.

- **Whether enforcement is returning SVs to compliance.** If there is a significant percentage of enforcement responses for SVs that do not return sites to compliance, discuss this with the agency and prepare a recommendation under Element 4.

- **The timeliness of enforcement for SVs.** The 2003 *Hazardous Waste Civil Enforcement Response Policy* states that warning letters or other appropriate notification of violations should be made by Day 150. By Day 240, EPA requires SVs to return to compliance. By Day 360, the implementing agency should make a referral to the Department of Justice or the state Attorney General, or enter into a final order with the violator. If the agency is failing to do this, address under Element 4.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003)

Metric 7a — Accurate compliance determinations

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of inspection reports reviewed that led to accurate compliance determinations. The numerator = number of inspection reports reviewed that led to accurate compliance determinations; denominator = number of inspection reports reviewed.

Guidance: EPA reviews inspection reports to determine accuracy of resulting compliance determinations. Inspection reports lead to inaccurate compliance determinations when:

- There are potential violations documented in the report but there is no documentation of a compliance determination.

- Based on evidence in the inspection report, the agency mischaracterized a violation in the compliance determination. For example, the inspection report indicates violations but the compliance determination says the facility is in compliance.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003), current *OECA National Program Manager Guidance*

Metric 7b — Violations found during inspections

Metric type: Review Indicator

What it measures: The percentage of sites with a CEI or FCI inspection during the year reviewed in which one or more violations was found. The numerator = number of sites with a

CEI or FCI in which one or more violations was found, denominator = number of sites with a CEI or FCI.

Guidance: This metric provides more information about the identification of violations for both significant non-compliers and secondary violators.

When the value for this metric is low, further investigation and/or supplemental file review may be necessary.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003)

Metric 8a — SNC identification rate

Metric type: Review Indicator

What it measures: The percentage of sites with a CEI or FCI inspection during the year reviewed that received a significant noncompliance (SNC) designation. The numerator = number of sites with a CEI or FCI that received an SNC designation during the year reviewed; denominator = number of sites with a CEI or FCI inspection.

Guidance: When the percentage deviates greatly from the national average, EPA may conduct a supplemental file review. Reviewers would pull a sufficient number of facility files to evaluate whether SNC determinations were appropriate.

Because this metric is a Review Indicator, EPA should only use it to provide additional context for file selection, and should not used it to create a finding in an SRF report.

This file review should encompass previous enforcement actions and cases in the pipeline to determine whether SNC did occur but went unreported, and whether violations reported as non-SNC appear to warrant SNC status according to the *Hazardous Waste Civil Enforcement Response Policy*.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003)

Metric 8b — Timeliness of SNC determinations

Metric type: Data, Goal

Goal: 100%

What it measures: The percentage of significant noncompliance (SNC) determinations made within 150 days of the first day of the inspection (Day Zero). The numerator = number of SNC determinations made within 150 days of Day Zero; denominator = number of SNC determinations.

Guidance: The December 2003 *Hazardous Waste Civil Enforcement Response Policy* states that agencies should make and report SNC designations by Day 150. On-time SNC designation ensures that agencies address significant problems in a timely manner.

EPA may need to conduct a supplemental file review when agencies do not meet the 100 percent goal to determine the seriousness of the issue.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003)

Metric 8c — Appropriate SNC determinations

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of files reviewed in which significant noncompliance (SNC) status was appropriately determined during the year reviewed. The numerator = number of facilities reviewed with violations correctly determined to be SNC or secondary violation; denominator = number of facilities with violations reviewed.

Guidance: Review all selected files in which the agency determined there was a violation. Specifically, look at inspection reports that identify potential violations and whether the facility was subsequently designated SNC. Here is an example for how to conduct such a review:

- The agency determined that 10 of the facilities EPA selected for file review had violations. The agency determined that five of these facilities were SNC and five were non-SNC.

- When EPA reviews these 10 facilities, it determines that one of the agency's non-SNC determinations was actually an SNC. The other nine facilities were accurately determined to be either SNC or non-SNC.

- The value for this metric is 9/10 = 90 percent.

For this metric, it may be necessary to review inspections and other activity from the previous year to determine whether they should have resulted in an SNC determination during the year reviewed.

The 2003 *Hazardous Waste Civil Enforcement Response Policy* defines SNC as "those violators that have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements."

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003)

Element 4 — Enforcement

Reviewers will use Element 4 to determine the agency's effectiveness in taking timely and appropriate enforcement, and using enforcement to return facilities to compliance.

The data verification process provides counts for informal and formal actions, and the number of actions with penalties. When comparing these counts to the violation and SNC metrics in Element 3, reviewers get a preliminary sense of the degree to which the state is taking appropriate enforcement.

This information is helpful when selecting facility files to review. If violation and SNC rates are high but enforcement is low, reviewers may wish to select extra facilities with violations and SNCs to determine why enforcement activity was low. If enforcement numbers are high, reviewers may wish to select extra facilities with enforcement to determine if those actions were appropriate and returned facilities to compliance.

Reviewers should generally focus on metrics 9a (enforcement that returns sites to compliance), 10a (timeliness of enforcement), and 10b (appropriate enforcement) when writing findings under this element.

Key metrics: 9a, 10a, and 10b. **Additional context:** 2a, 7b, and 8a.

Metric 9a — Enforcement that returns sites to compliance

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of enforcement responses that have returned or will return sites in significant noncompliance (SNC) or secondary violation (SV) to compliance. The numerator = number of enforcement responses reviewed for SNC and SV that document that the site is in compliance or is on schedule to return to compliance; denominator = number of enforcement responses against SNC and SV reviewed.

Guidance: The 2003 *Hazardous Waste Civil Enforcement Response Policy* (ERP) states that an agency should address SNC with formal enforcement action and SV with at least an informal action. The formal action should result in an enforceable agreement that seeks injunctive relief to ensure the violator returns to compliance. Documentation of the return to compliance for both SNC and SV should be included in the file.

Review files where the agency took enforcement during the year reviewed in response to SNC or SV to determine if those sites have returned to compliance or are on a schedule to return to compliance.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003)

Metric 10a — Timely enforcement taken to address SNC

Metric type: Data, Goal

Goal: 80%

What it measures: The percentage of year-reviewed and previous-year significant noncompliance (SNC) violations addressed with a formal enforcement action or referral during the year reviewed and within 360 days of Day Zero. The numerator = year-reviewed and previous-year SNCs that were addressed by a formal enforcement action in the year reviewed and within 360 days of Day Zero; denominator = year-reviewed and previous-year SNCs addressed by a formal enforcement action in the year reviewed.

Guidance: When a facility is determined to be in SNC, agencies should resolve SNC in a timely manner so problems do not linger. For SNCs, the 2003 *Hazardous Waste Civil Enforcement Response Policy* (ERP) allows 360 days from the first day of inspection (Day Zero) for final formal enforcement action or referral to EPA, the agency attorney general, or Department of Justice.

The ERP recognizes that 20 percent of SNCs may exceed this timeline. Therefore, this metric's goal is for 80 percent of SNCs to receive enforcement within 360 days. Supplemental file review is necessary for lead agencies below 80 percent to ascertain whether the data metrics indicate a problem with timely action.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003)

Metric 10b — Appropriate enforcement taken to address violations

Metric type: File Review, Goal

Goal: 100%

What it measures: The percentage of files with enforcement responses that are appropriate to the violations. The numerator = number of enforcement responses reviewed that are appropriate to the violations; denominator = number of facilities reviewed with significant noncompliance (SNC) or secondary violation (SV). The denominator should include all violations regardless of whether the agency accurately identifies the violation.

Guidance: The 2003 *Hazardous Waste Civil Enforcement Response Policy* (ERP) states that agencies should address SNC through a formal enforcement action. This should initiate an administrative or civil action that results in an enforceable agreement or order and imposes sanctions. The order should seek injunctive relief that ensures an expedient return to compliance.

For SVs, the ERP states that informal enforcement is the minimally appropriate response. Informal enforcement notifies the violator of its violations. If the violator does not come into

compliance within 240 days of Day Zero, then the implementing agency should re-classify the site as an SNC.

Enforcement actions for both SVs and SNCs should mandate compliance.

Applicable EPA policy/guidance: *Hazardous Waste Civil Enforcement Response Policy* (2003)

Element 5 — Penalties

Element 5 evaluates penalty documentation using three metrics — 11a for gravity and economic benefit, 12a for difference between initial and final penalty, and 12b for collection.

Reviewers can gauge the level of penalty activity in the year reviewed through the RCRA Dashboard, which provides information on the number of penalties and their dollar values.

Key metrics: 11a, 12a, and 12b.

Metric 11a — Gravity and economic benefit

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of penalty calculations reviewed that document, where appropriate, gravity and economic benefit. The numerator = number of penalties reviewed where the penalty was appropriately calculated and documented; denominator = the number of penalties reviewed.

Guidance: Lead agencies should document penalties sought, including, whenever appropriate, the calculation of gravity and economic benefit. With regard to this documentation, *Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements* state the following:

> EPA asks that a State or local agency make case records available to EPA upon request and during an EPA audit of State performance. All recordkeeping and reporting should meet the requirements of the quality assurance management policy and follow procedures established by each national program consistent with the Agency's Monitoring Policy and Quality Assurance Management System. . .
>
> State and local recordkeeping should include documentation of the penalty sought, including the calculation of economic benefit where appropriate. It is important that accurate and complete documentation of economic benefit calculations be maintained to support defensibility in court, enhance Agency's negotiating posture, and lead to greater consistency.

Applicable EPA policy/guidance: *RCRA Civil Penalty Policy* (2003), *Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements* (1993), *Revised Policy Framework for State/EPA Enforcement Agreements* (1986)

Metric 12a — Documentation of rationale for difference between initial penalty calculation and final penalty

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of penalties reviewed that document the rationale for the final value assessed when it is lower than the initial calculated value. The numerator = number of penalties reviewed that document the rationale for the final value assessed compared to the initial calculated value; denominator = number of penalties reviewed where final value assessed is lower than initial calculated value.

Guidance: According to the *Revisions to the Policy Framework for State/EPA Enforcement Agreements* (1993), states should document any adjustments to the initial penalty including a justification for any differences between the initial and final assessed penalty.

Review penalty files to identify their contents with respect to initial and final penalties. If only one of the two penalty amounts is found in the file, ask the agency why the initial and final assessed penalties are not both documented, along with the rationale for any differences.

Applicable EPA policy/guidance: *RCRA Civil Penalty Policy* (2003), *Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements* (1993), *Revised Policy Framework for State/EPA Enforcement Agreements* (1986)

Metric 12b — Penalty collection

Metric type: File Review, Goal

Goal: 100%

What it measures: Percentage of enforcement files reviewed that document collection of penalty. The numerator = number of penalties reviewed with documentation of collection or measures to collect a delinquent penalty; denominator = number of penalties reviewed.

Guidance: This metric assesses whether the agency has collected the final penalty. Begin by looking in the file for a cancelled check or other correspondence documenting transmittal of the check. If this documentation is not in the file, ask the agency if they can provide proof of collection through the data system of record.

If the agency has not collected the final penalty, there should be documentation either in the file or in the data system of record that the agency has taken appropriate follow-up measures. The finding can take into consideration the reasons for difficulty of collecting penalty, such as bankruptcy, litigation, etc.

Applicable EPA policy/guidance: *RCRA Civil Penalty Policy* (2003), *Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework for State/EPA Enforcement Agreements* (1993), *Revised Policy Framework for State/EPA Enforcement Agreements* (1986)

Appendix: Acronyms

CESQG	Conditionally exempt small quantity generator
CMS	Compliance Monitoring Strategy
ECHO	Enforcement and Compliance History Online
EPA	U.S. Environmental Protection Agency
ERP	December 2003 Hazardous Waste Civil Enforcement Response Policy
FY	Federal fiscal year (Oct. 1 - Sept. 30)
LQG	Large quantity generator
MOA	Memorandum of Agreement
NPM Guidance	FY 2011 National Program Manager Guidance
OTIS	Online Tracking Information System
PPA	Performance Partnership Agreement
PPG	Performance Partnership Grant
RCRA	Resource Conservation and Recovery Act
RCRAInfo	RCRA national data system
TSDF	Treatment, storage, and disposal facility
SRF	State Review Framework
SNC	Significant noncompliance
SQG	Small quantity generator
SV	Secondary violator

RCRA Evaluation Types

CAC	Corrective Action Compliance Evaluation
CDI	Case Development Inspection
CEI	Compliance Evaluation Inspection
CSE	Compliance Schedule Evaluation
FCI	Focused Compliance Inspection
GME	Groundwater Monitoring Evaluation
OAM	Operation and Maintenance Inspection